

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOHN LAMBERT,

Plaintiff,

vs.

L. ROBLES,

Defendant.

CASE NO. 07 CV 1769 JM (NLS)

**ORDER ADOPTING REPORT
AND RECOMMENDATION AND
GRANTING PARTIAL MOTION
TO DISMISS**

Plaintiff, a state prisoner proceeding pro se, filed a § 1983 lawsuit in the Central District of California on June 21, 2007. The Clerk for the Central District transferred the case to the Southern District of California on September 7, 2007. Plaintiff claims that defendant L. Robles violated his Eighth and Fourteenth Amendment rights. Defendant now moves to dismiss (1) Plaintiff's claim for money damages against Defendant in Defendant's official capacity, and (2) Plaintiff's Fourteenth Amendment claim. Plaintiff filed no opposition to the motion.

On March 28, 2008, Magistrate Judge Nita Stormes issued a Report and Recommendation ("R&R") recommending that the court grant Defendants' motion on the grounds that (1) the Eleventh Amendment bars a suit for money damages against an officer in his official capacity, and (2) Plaintiff fails to allege facts sufficient to support his Fourteenth Amendment Equal Protection claim. Plaintiff filed no opposition to the R&R.

Having carefully considered the thorough and thoughtful R&R, the record before the court, the absence of any objections to the R&R, and the applicable authorities, and the absence of any

objections, the court hereby **ADOPTS** the R&R in its entirety. Accordingly, the court:

- 2 1. **DISMISSES** with prejudice Plaintiff's claim for money damages against Defendant
3 in Defendant's official capacity;

4 2. **DISMISSES** without prejudice Plaintiff's Fourteenth Amendment claim, and
5 **GRANTS** 30 days' leave to amend Plaintiff's Equal Protection claim; and

6 3. **ORDERS** that if Plaintiff does not amend his complaint within 30 days, Plaintiff's
7 current complaint will be the operative complaint in this matter, such that the only
8 actionable remaining claim would be Plaintiff's Eighth Amendment claim for cruel and
9 unusual punishment, which Plaintiff can pursue for money damages against Defendant
10 in Defendant's individual capacity, and for which Plaintiff can seek declaratory relief
11 against Defendant in Defendant's official capacity.

IT IS SO ORDERED.

DATED: May 27, 2008

Jeffrey S. Miller

Hon. Jeffrey T. Miller
United States District Judge

cc: All parties